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ABSTRACT

The legal issues involved in requiring students to live on campus, the parietal rule, are examined. It is suggested that the reason for establishing student housing and the rationale justifying the establishment of residence halls are important aspects of the question. Court cases are cited from 1899 that upheld the college's right to exemption from property taxation, the right of the college to require students to live in residence halls or dormitories, and the college's authority to issue and sell bonds to obtain funds for construction of student dormitories. The legal action taken by students themselves presents the most significant and difficult challenges for college and university officials. When implementing a policy that is to apply equally to all students, the administrator must be prepared to deal consistently with exceptions. The evidence of educational purpose is critical in order to legitimize the parietal regulation at a college or university. A 1969 case ruling against the university concerned whether the college may require a certain group of students to live on campus not for the students' welfare but simply to increase revenue for housing. The court ruled that support of the housing was an essentially monetary obligation that should fall equally on all students. (SW)

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A LEGAL PERSPECTIVE OF THE PARIETAL RULE

by

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A Legal Perspective of the Parietal Rule

The legal issues involved with housing students encompass many different areas. In this paper the question of requiring students to live on campus, the parietal rule, will be examined. The reason for establishing student housing and the rationale justifying the establishment of residence halls are all important aspects of the question. In reviewing the litigation, issues such as taxation, the issuing and selling of revenue bonds, the rights of the university to promulgate and enforce regulations become involved in the question.

In 1899, Yale University v. New Haven, [12] the issue of taxation related to certain campus buildings was the cause for legal action. The supporting data which outlines the early historical development of the university in the new world makes this an important case to mention.

The definition of "college" as a place of residence for students establishes the dormitory as an essential agency for the educational process. The requirement of students to live on campus is not a new idea as this case verifies. In 1642 the court established overseers of Harvard University and in 1650 the charter was granted. The statutes adopted provided that all students admitted to the college "must board at the commons." As further described in this case, Yale University contended that buildings

such as dormitories, dining halls defined as "college" were used for the purposes of housing, feeding, instructing and governing students while qualifying for the university degree. This definition was affirmed in the Yale Charter. The decision of the court affirmed for Yale College that the only property not exempt from taxation was property for private or commercial use. The court did not find any impropriety on the part of Yale in dealing with its exemptions.

The right of a college or university to require students to live in designated residence halls or dormitories was not challenged until much later.

The Court of Civil Appeals of Texas in 1919 heard the case of Castleberry v. Tyler Commercial College.[1] Some of the issues of the case included:

1. Agreement by the student to allow the school to pick a boarding place, where the school reserved the right to require its students to board in homes approved by the college, and might require a student to change her lodgings.
2. Agreement by the student to board in homes approved by college was not contrary to public policy.
3. Exclusion of the student from the college who refused to board in home approved by college was warranted.

In August, 1918, Grace Castleberry entered in to a contract with Tyler Commercial College to complete a course in shorthand. She secured a room in compliance with the college regulations. In November, however, the college requested her and five other girls move to another rooming house. Five of the six complied.

The college insisted that she cease attendance at its school until she complied with the demand it made on her to move to another rooming house. She was at liberty to resume her attendance at the school on her compliance with the demand she agreed upon by her contract with Tyler College. The court upheld Tyler Commercial College.

The 1934 case, State v. Regents of University System of Georgia[10] largely dealt with the authority of the Board of Regents to obtain a loan to construct new buildings at the university. Support pertinent to the question of requiring students to live in university dormitories was established. Requiring students to occupy new buildings at institutions in the University system in preference to existing buildings in order that fees charged for such use might create income to retire bonds issued for the purpose of raising funds with which to construct new buildings was not an abuse of discretion by the regents of university system. No abuse of discretion appears in the proposal to require students to occupy new buildings in preference to existing buildings in order that fees charged for such use may create income to retire bonds issued for the purpose of raising funds with which to construct new buildings. The Chancellor of the University system stated that the rates charged to students for the use of the dormitories and other facilities throughout the system had never been the subject of complaint and were just and reasonable. Changes in the future for the use of the new and improved dormitories and facilities would be on a parity with charges being made for existing facilities including reasonable differences based on condition, type, location and

relative convenience of the building.

While this case was not directly related to the issue of requiring students to live on campus, the court did support the authority of the regents to require occupancy and the use of certain buildings on the campus.

The Supreme Court of Colorado in 1935 heard the case of Hoyt et. al v. Trustees of the State Normal School.[3] This case embodies the issues from both the Castleberry v. Tyler Commercial College and State v. Regents of the University System of Georgia.

The plaintiffs were in the capacity of taxpayers, householders and boarding housekeepers. They contended that the acts of the trustees were in violation of the law for not only contracting indebtedness by constructing dormitories on the campus but also in assuming obligations and liabilities that required the trustees to promulgate, exercise and delegate arbitrary, discriminatory and unreasonable authority over the living arrangements of students attending the college to the injury of the plaintiffs.

The defendants asserted that the grant of power to the trustees of the Normal School supported their action. The constitution of the State of Colorado prescribed the control and regulation of such institutions, authorized the establishment of the defendant school and created the board of trustees.

It was within the controlling power of the board to promulgate and enforce reasonable rules for conduct and discipline of the institution. Plaintiffs objected to the action of the board in contracting with the government to adopt and enforce rules and regulations, for revenue raising purposes, requiring students

to occupy the dormitories at arbitrarily fixed rates and insisted that such rules infringed upon the constitutional guarantee of the liberty to contract for such by the students or those acting for and in their behalf. These objections were found to be without force and effect.

The court dismissed the complaint, holding, in effect that the plaintiffs were without capacity to maintain the action.

In the case State v. Board of Regents of State of Kansas,[11] the Attorney General challenged the authority of the Board of Regents to issue and sell bonds to obtain funds for construction of one or more student dormitories. Writ denied.

The substantive issues in the case were:

1. Revenue bonds were to be issued and sold by the Board of Regents in order to obtain funds for acquisitions such as student dormitories. The revenue and income from dormitories and their facilities alone were to pay the bond holders.
2. The constitution makes it mandatory that the legislature encouraged the promotion of intellectual and moral improvement.
3. The legislature had the authority to determine whether student dormitories were necessary, or desirable in the promotion of educational progress in state institutions and the advancement of public welfare.
4. The wisdom of legislation designed to promote education and the public welfare rested solely with the legislative branch. It is a subject with which the courts have no concern and cannot supersede the legislative judgment.

Their sole function was one of determining the validity of a challenged act.

5. Student dormitories contemplated and operated on a non-profit basis constitute public buildings or public improvements of the educational institutions of which they become a part.

This case also alluded to the early historical development of education in this country specifically citing Yale (1899). The educational rational for dormitories was reiterated.

Pyeatte v. Board of Regents of University of Oklahoma[8] involved a class action for an injunction to restrain the enforcement of certain rules promulgated by the Board of Regents of the University of Oklahoma, contending that the enforcement of such rules denied the liberties of the plaintiff and others in a similar situation as guaranteed by the Fourteenth Amendment of the Constitution of the United States.

Some of the pertinent facts of this case included:

1. The Board of Regents was authorized by 1945 Act to set aside portions of the respective campuses in Oklahoma for the construction of buildings such as dormitories and other self liquidating projects.
2. This act also authorized the Board of Regents to fix rents and charges in connection with the use of the buildings and facilities to assure prompt payment of the bonds as each came due. Further authorization was given to enforcing rules and regulations with reference to the use of buildings and with reference to requiring any class or classes of

students to use the building as it was deemed desirable for the welfare of the institution and its students.

3. The Board of Regents of the University of Oklahoma adopted a Resolution of Student Housing in 1948, which provided:
   - All undergraduate, unmarried students be required to live in University operated dormitories to the extent that such dormitory rooms are available on the main campus. Requirements shall not apply to unmarried students, (a) living with parents or other relatives in town, (b) commuting from places of residence in town, (c) working for room in lieu of paying rent, (d) requirement shall not apply to sorority, fraternity and approved student cooperative houses except that all freshman women not in (a), (b) and (c) shall live in University operated dormitories to the extent such facilities are available.
   - All undergraduate married students living in town with husband or wife be required to live in certain University family dwelling units except if living with parents, working for room in lieu of paying rent or own their own house.

There were specific exemptions outlined i.e. hardship cases, graduate students and married students with children. All students were expected to comply with the Housing Regulations before they were permitted to attend the University.

The plaintiff in this case was a taxpayer of the state who was in the rooming and boarding house business. Prior to 1947

her home was one of the private homes approved by authorities for housing male students attending the University. As a result of the Housing Regulations she found herself unable to fill her rooms with students. It was her contention that the university was violating her constitutional rights in the following ways:

1. Regulations deprived the plaintiff of her liberty to contract and her property without due process of law contrary to the Fourteenth Amendment.
2. Rules were unreasonable, arbitrary and discriminatory and denied the plaintiff the equal protection of the laws.

The plaintiffs objection to the action of the board to adopt and inforce rules, for revenue raising purposes, requiring students to occupy the dormitories at arbitrary fixed rates, as in the Hoyt v. Trustees of State Normal School was without force and effect.

The plaintiff did not challenge the authority of the University of Oklahoma to issue rules to govern admission to the university, but contended that the effect of the rules was a violation of her liberty to contract. Her argument placed her in an anomalous position. On one hand there was agreement that reasonable rules and regulations for admission to the University were valid and proper and on the other hand her rights had been denied by these proper and valid regulations.

In the arguments it was pointed out, but not passed upon, that if there was any violation of rights or discrimination as a result of the Housing Regulations it was against the students and not against the private home owners such as the plaintiff. Thus,

the plaintiff was not in a position to challenge the constitutionality of the statutes or regulations promulgated under and by force of the power conferred upon the Board of Regents.

The relief sought in this case was denied and the action dismissed.

Mollere v. Southeastern Louisiana College[4] in 1969 renders a different perspective to the question of requiring students to live in college residence halls. Some of the issues in the case include:

1. Upperclass women under 21 who attended the coeducational state college brought action involving college's requirement that unmarried women under 21 live in college residence halls.
2. The case posed the question of whether state colleges can constitutionally require women under age of 21 to support college's housing system.
3. In recent years male students had used dormitory facilities in diminishing numbers. The State Board of Education and College had become concerned about meeting the principal and interest obligations to government. As a result the State Board of Education resolved that Southeastern Louisiana College would require a sufficient number of students to live in the dormitory to meet the payments.
4. In compliance with this resolution a regulation effective 1969-70 required unmarried women students under 21 not living with parents or close relative to live in campus residence halls unless granted by Dean of Women.

5. At same time other rules required any freshman male student not living with parents or close relative live on campus unless exception granted by Dean of Men.
6. Plaintiffs did not question the equality of the freshman men and women to live on campus and both sides agreed that was not the issue of the case. No evidence was taken on that issue.
7. It was undisputed that the Colleges sole reason for requiring women and freshman men live in college residence halls was to meet the financial obligation which arose out of the construction of these dormitories.
8. When the court specifically asked the Dean of Women the reason for the requirement she testified that the only reason was to increase revenue for the housing system. Why this particular group of students she indicated that the girls in this group and freshman men composed the precise number needed to fill the dormitories. Testimony confirmed by Auditor of the University and not contradicted by any other officer.
9. The sole issue of case was whether the College may require a certain group of students to live on campus not for the welfare of the students themselves but simply to increase revenue for housing.

The court ruled this was not a valid classification under the Equal Protection Doctrine. This was viewed as an irrational, discriminatory action not permissable under the Fourteenth Amendment. Judgment was for the plaintiffs.

The case further expanded on the reason for the judgment which included that the support of the housing system was an obligation, which was essentially monetary and should fall equally on all students. In addition, to select a group less than all, under these conditions, to fulfill an obligation which should fall equally on all was a violation of equal protection no matter how the group is selected.

In 1970, Pratz v. Louisiana Polytechnic Institute[6] the issue is raised as a class action for declaratory judgment of the constitutionality of such regulations which required some students to live and eat meals in college facilities.

The important issue is whether supported institutions of higher education may through the establishment of reasonable parietal regulations require students to live and eat their meals in facilities provided by the institution. The plaintiffs were students at Louisiana Polytechnic Institute a four year coeducational institution under the control of the Louisiana Board of Education. Plaintiffs sought to declare, unconstitutional, resolutions of the Board which require them to live in dormitories while at Louisiana Polytechnic Institute. The defendants maintained that parietal rules were based on sound educational principles and thinking. Living learning concepts espoused by the regulations have the highest educational value and should be enforced as being in the best interest of all students.

Education is the States most worthwhile function. In implementing that duty, states should be allowed wide latitude in determining the manner in which they are to operate. In upholding the institutions regulations, the Court stated, if sound educational

policies dictate that the educational mission of the state is best carried out by providing for the great majority of student citizens of each state, adequate housing and eating facilities at a cost which can be afforded by all students seeking entrance into a particular university, then we do not think it our place to declare otherwise. The court also pointed out that students had a choice of institutions to attend some of which did not have housing accommodations. If, in selecting the institution to attend, a student chooses one with dormitory and dining facilities and parietal rule he knows what he is choosing, therefore, invalidating the complaint.

The Court held that parietal regulations of state supported institutions of higher education requiring students, with certain exceptions, to live and eat their meals in facilities provided by the institution were not unconstitutional under any contentions alleged.

In 1974 Poynter v. Drevdahl,[5] the plaintiffs, students at Northern Michigan University, filed a class action against the defendants, members of the Board of Control of that University. As a result of increased enrollments, dormitories were constructed to meet the needs of the student demand for housing. In 1970 the Board of Control adopted a housing requirement. This stipulated that all single undergraduate students were required to live in University residence hall except those who were 23 years of age or older or those residing with parents or legal guardians in Marquette.

An off-campus Housing Committee was established to review and exempt students from the general requirement of the basis of the following priorities: medical, financial, relative and commuter.

The plaintiffs sought to have the court declare that the housing regulations violated their rights under the first, fifth, ninth and fourteenth Amendments of the United States Constitution, the Civil Rights Act of 1964 and the Department of Housing and Urban Development rules and regulations.

The plaintiffs claimed that the reason for the requirement was completely fiscal and that the ruling in the Mollere v. Southeastern Louisiana College supported their position. The defendants placed reliance on the decision rendered in Pratz v. Louisiana Polytechnic Institute.

The defendants argued that the action of the Board was supported by the Constitution of the State of Michigan which recognized the policy of not only education itself but the means of education. Article VIII, Sections 4 and 6 gave to institutions of higher learning the broad power of regulation, the specific authority to erect residence halls and the declared policy of encouraging the means of education. All indicate a public policy consistent with the general residence requirement.

On the basis of the supportive data from the Pratz case the court ruled that the defendants motion for summary judgment was granted. The court held that the Housing requirement was neither arbitrary capricious nor constitutionally discriminatory.

In Cooper v. Nix[2] in 1974 action was brought by students challenging the Southeastern Louisiana University housing policy which exempted all students 23 years of age and older from the on-campus residence requirements. When the case was first heard the court found disparity between the treatment of students in age groups 21 and 22 and those 23 and over to be without rational

basis and thus arbitrary. The defendants appealed the decision which enjoined the university from requiring 21 year old and older students to live on campus. The Court of Appeals affirmed in part and reversed in part. Judge Goldberg affirmed that the defendants had failed to show any rational basis for the disparity between the treatment of students under age 23 and those over 23. He dissented, however, in correcting the disparity of the policy to read 21 years and older as opposed to 23 and over as this shifted the arbitrariness to another age level. He stated that he would enjoin the defendants from continuing to make that distinction and would leave it to the various elements of the University to work together to achieve a reasonable and equitable alternative.

In the case of Prostrollo v. University of South Dakota[7] 1974. Two students sought to challenge a parietal rule at the University of South Dakota requiring all single freshman and sophomore students to live in university residence halls. The District Court of South Dakota held the regulation to be unconstitutional. While the evidence given supported the belief that the residence hall requirement had an educational basis, the court emphasized the factual conclusion that the primary purpose of the parietal rule was to defray the cost of revenue bonds. It found the educational arguments unconvincing and unsupported by the evidence presented. The University appealed the decision.

The Court of Appeals held that the regulation was not unconstitutional either as denying equal protection of the laws or as constitutional invasion of privacy. The parietal rule and its challenged classification were directed toward a permissable objective. The classification was based on the belief that there was an

educational benefit derived from the experience. The court concluded that the rule was reasonable and not arbitrary.

In the most recent case Schick v. Kent State University[9] 1975 a class action was brought to have declared unconstitutional and to enjoin enforcement of the mandatory on campus housing policy of Kent State University. The housing requirement stated all single students are required to participate in the on-campus housing program for their first six quarters of enrollment, or the completion of two academic years on the attainment of junior standing.

Judge Thomas in rendering the decision in favor of Kent State University made several points pertinent to the entire issue of requiring student to live on campus.

1. The housing policy adopted in 1972 represented an analysis of the needs of the University community taking into consideration educational and fiscal requirements.
2. The policy on its face value expresses a legitimate objective of the University. Whether the facts actually show that the program is meeting the goals of developing the educational advantages of student is not the issue but whether the program as its being implemented has an opportunity to achieve the ends must be considered.
3. The fiscal purposes are also involved as in the Prostello case.
4. The claim of improper classification is not supported by the evidence. Applying a maturation policy, supports the idea that we learn as we go along. The premise on which this housing policy is applied to the younger students

attending the university, the freshmen and sophomores, as opposed to the juniors and the seniors is a rational classification.

5. The claim that there was a violation of equal protection under the law has not been established. As a student enters the university and passes from underclassman status to upperclass status over a four year period the claim of being treated prejudiciously or unequally is unwarranted.
6. The policy when adopted was applied to new students. At the time the plaintiff entered the University he was aware of the mandatory policy which negates his claim constitutionally that he has lost property rights.
7. The aspect of the Fourteenth Amendment, whether or not this policy is so arbitrary and so capricious that on the due process basis it should be struck down is not a valid assessment. The policy has a built in evaluation provision. If the educational benefits are not sufficient to warrant continuance, the policy can be withdrawn. That decision is not to be made in the court but rather a decision to be made on the campus of Kent State University.

The housing question can be seen from several different perspectives as the content of each of the cases presented substantiates. Asserting the educational function of the dormitory for purposes of tax exemption was the earliest issue. The right of the college or university to require students to live on campus has been challenged by taxpayers, by state officials and by students. The taxpayers were largely concerned that the university requirements

impinged upon their rights. The State has challenged the authority of an institution to build dormitories, issue bonds and require students to occupy the buildings. In all of these cases the court has ruled for the college or university in question.

The legal action taken by the students themselves presents the most significant and difficult challenges for college and university officials. Where the educational merits of living on campus do not exist or cannot be substantiated the courts have ruled for the students. The educational argument has been put to the test and as pointed out in one case was unconvincing and unsupported by factual evidence. The rationale outlined in the Yale case supporting the tax exempt issue, that the housing program supported and was an integral part of carrying out the educational objectives of the university was also successfully presented in the Shick case. The cause for legal action in these cases was different but the substantive issues were similar and the court ruled for the university in both cases.

The implications for higher education are clear as established in some of the more recent court decisions. The evidence of educational purpose is critical in order to legitimize the parietal regulation at a college or university. In establishing the regulation, the housing administrator must be certain that the application is not arbitrary or discriminatory to any classification of students effected.

When implementing a policy that is to apply equally to all students the administrator must be prepared to deal consistently with exceptions. Establishing a system of review, such as a housing

appeals board, ensures the student the right of due process.

Finally, in being held accountable for an important educative process at an university, the administrator must learn to quantify input and outgrowth of the program and measure these against the stated goals and objectives of the institution as well as the program itself. To provide convincing evidence that the program has the potential to serve an educational purpose has been the most important factor as viewed by the courts. This presents a stimulating and very real challenge for the university administrator.

Bibliography of Cases

(1) Castleberry v. Tyler Commercial College
217 S.W. 1112 (1920)

(2) Cooper v. Nix
496 F. 2d 1285 (1974)

(3) Hoyt v. Trustees of the State Normal School
44 P (2d) 513 (1935)

(4) Mollere v. Southeastern Louisiana College
304 F. Supp. 826 (1969)

(5) Poynter v. Drevdahl
359 F. Supp. 1137 (1972)

(6) Pratz v. Louisiana Polytechnic Institute
316 F. Supp. 872 (1970)

(7) Prostello v. University of South Dakota
507 F. 2d 775 (1974)

(8) Pyeatte v. Board of Regents of University of Oklahoma
102 F. Supp. 407 (1952)

(9) Shick v. Kent State University
Civil Action File No. 74-646 (1975)

(10) State v. Regents of University System of Georgia
175 S. E. 567 (1934)

(11) State v. Board of Regents of the State of Kansas
207 P. 2d 373 (1949)

(12) Yale University v. New Haven
71 Conn. 316, 42 A 87

Bibliography

Alexander, Kern and Solomon, Erwin S., College and University Law, The Mickie Company, 1972.

Brubacher, John S. and Rudy, Willis, Higher Education in Transition, Harper and Row Publishers, 1968.

Baker, Clarence J., The Legal Basis for College Student Personnel Work, The American Personnel Association Student Personnel Series No. 2, 1961.

Gehring, Donald D., "Legal Trends and Development in College Housing," The Journal of College and University Housing, Vol. 4, Number 1, Summer, 1974, pp. 4-8.

Wallacher, Carol, "Legal Status of Regulations Requiring Students to live in Campus Residence Halls," ACHO News, Vol. 14, No. 2, November, 1974, pp. 4-7.